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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re L.C. et al., Persons Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

N.H. et al.,

Defendants and Appellants.

F078433

(Super. Ct. Nos. 517777, 517778)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Roni Keller and Christopher Blake, under appointment by the Court of Appeal, for
Defendants and Appellants.

Office of the Stanislaus County Counsel for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Detjen, J. and Meehan, J.

This dependency appeal concerns L.C. and N.C., now four and two years old respectively. In October 2018, the juvenile court terminated the parental rights of the children's parents, D.C. (father) and Nikki H. (mother) (the parents). (Welf. & Inst. Code, § 366.26.)¹ At the same hearing, the court denied father's modification petition (§ 388), requesting the children's placement with their paternal aunt. After reviewing the juvenile court record, the parents' court-appointed attorneys informed this court they could find no arguable issues to raise on the parents' behalf. This court granted the parents leave to personally file a letter setting forth a good cause showing that an arguable issue of reversible error exists. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844 (*Phoenix H.*).

The parents submitted letters contending the social workers from the Stanislaus County Community Services Agency (agency) lied to them and opposed reuniting them with their children no matter how diligently they tried to comply with their court-ordered services. They also fault the agency for not vigorously pursuing placement of their children with the paternal aunt.

We conclude the parents failed to set forth a good cause showing that any arguable issue of reversible error arose from the October 2018 hearing. (*Phoenix H.*, *supra*, 47 Cal.4th at p. 844.) Consequently, we dismiss the appeal.

PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in November 2016 in Stanislaus County after father was observed hitting mother at a rest stop and arrested for domestic violence. The parents were homeless and living in a car with the children, then 22 and four months of age. The agency took the children into protective custody because of the parents' ongoing domestic violence and transience. They left North Carolina the previous April with an active child welfare case in Robeson County, also the result of domestic violence.

¹ Statutory references are to the Welfare and Institutions Code.

Because of their departure, the Robeson County Department of Social Services closed their case in June 2016. The agency placed the children in foster care.

In late November 2016, the paternal aunt contacted the agency to inquire about the children. She said she once had temporary custody of L.C. until the parents created issues for her. She had never met N.C., as mother was pregnant with him when the parents left Robeson County. Asked whether she was interested in placement, she did not think she could take the baby but said she would ask her husband and let the social worker know. She did not, however, follow up with the social worker about placement or ask for visitation.

At the dispositional hearing in January 2017, the juvenile court exercised its dependency jurisdiction over the children and ordered reunification services for the parents. The court found the agency exercised due diligence in locating relatives. In March 2017, the children were placed in a new foster home after their placement was disrupted. However, it was not a concurrent home. While the agency searched for such a home, it generated placement letters to relatives, which included the paternal aunt. She did not respond to the letters and the letters sent to her were not returned as undeliverable. On April 5, a social worker contacted the paternal aunt regarding placement. She said she would take the children if they needed her but if the parents were participating in their services, she would not pursue placement. She did not ask for visitation and the parents did not request that the children be placed with her. In June 2017, the children were placed in a concurrent home where they remained.

By the six-month review hearing scheduled for July 2017, the agency was recommending termination of services because, although the parents were committed to completing their case plan requirements, they were not making sufficient progress. It appeared to the agency that they considered domestic violence acceptable in a relationship.

The juvenile court continued the six-month review hearing multiple times, commenced a contested hearing in October 2017 and concluded it in February 2018. The court terminated reunification services and set a section 366.26 hearing for May 2018. The court also granted the foster parents de facto parent status.

Mother challenged the setting of a section 366.26 hearing by extraordinary writ petition, seeking to reinstate reunification services. We denied the petition.²

On March 14, 2018, mother's attorney filed a modification petition under section 388 (section 388 petition), seeking an expedited home study through the Interstate Compact on the Placement of Children (ICPC) of the paternal aunt's home in North Carolina for purposes of placing the children with her, and liberal and frequent visitation for her and the children in the interim. Attached to the petition was the paternal aunt's declaration, detailing her efforts to obtain placement beginning in November 2016. She was not made aware the agency could have begun the home study process as early as November 2016. Nor was she told the children were moved in June 2017 and that she could have visited them.

On March 26, 2018, the juvenile court granted mother's section 388 petition, with modifications presented by the parties. The court ordered the agency to expedite the ICPC of the paternal aunt's home and arrange in-person visits followed by Skype visitation. In April, the paternal aunt had two in-person visits with the children at the agency's visitation center and a Skype visit.

The agency recommended the juvenile court terminate parental rights and select adoption with the de facto parents as the children's permanent plan at the section 366.26 hearing. Although the parents interacted well with the children during visitation and L.C. stated she wanted to go to "Mommy's home," referring to mother, the parents had not

² *Nikki H. v. Superior Court* (May 4, 2018, F077007) [nonpub. opn.].

resolved the problems requiring agency intervention. Meanwhile, the de facto parents were committed to adopting the children.

The section 366.26 hearing originally set for May 2018 was continued and convened on October 9, 2018. Meanwhile, father filed a section 388 petition, seeking placement of the children with the paternal aunt in North Carolina. By this time, the aunt's home had been approved for placement. Father faulted the agency for discouraging the aunt from pursuing placement and argued the agency abused its discretion by moving them into a prospective adoptive home instead of placing them with a relative. He also pointed out that the children were of mixed race in that he was African-American and from a family that strongly identified with this heritage. Being of his ethnicity, his sister would be able to provide the children a cultural identity whereas the de facto parents (prospective adoptive parents), who were not African-American, could not.

The agency opposed father's section 388 petition, opining it was not in the children's best interest to remove them from the prospective adoptive parents with whom they had lived for 14 months. The agency also expressed concern about the paternal aunt's ability to protect the children from the parents.

The juvenile court set a hearing on father's section 388 petition and combined it with the section 366.26 hearing (combined hearing).

The juvenile court concluded the six-day combined hearing on October 25, 2018, after hearing testimony from the paternal aunt, the social workers, the prospective adoptive mother and the court appointed special advocate, who testified she believed the children should be placed with their aunt. Neither parent was present for the hearing.

Virtually all of the contested hearing was devoted to testimony about the agency's decision not to place the children with their paternal aunt. Following testimony and argument, the juvenile court denied the section 388 petition. The attorneys for the agency and the minors submitted the issue of termination of parental rights on the agency's

recommendation. The parents' attorneys objected with no evidence and none of the attorneys argued the case. The court found the children were likely to be adopted, none of the exceptions to adoption applied, and terminated parental rights.

DISCUSSION

When dependency proceedings culminate in a hearing to select a permanent plan under section 366.26, the juvenile court has little choice but to terminate parental rights and select adoption as the child's permanent plan if it finds, as it did here, that the children are likely to be adopted and none of the exceptions to adoption apply. (Welf. & Inst. Code, § 366.26, subd. (c)(1).) Here, the parents' attorneys offered no evidence at the section 366.26 hearing to rebut the agency's recommended findings and orders. On appeal, the parents claim the social workers were not honest or helpful but do not challenge any of the findings underlying the juvenile court's decision to terminate parental rights. Consequently, they have not established good cause that an arguable issue exists on the record with respect to the court's decision to terminate their parental rights.

Nor have the parents established good cause that an arguable issue exists with respect to the juvenile court's denial of father's section 388 petition, requesting an order placing the children with the paternal aunt. Liberally construed, they contend the agency failed in its duty to place the children with the paternal aunt. Such a duty arises from dependency law which favors placing a child with relatives. Section 361.3, subdivision (a) requires that preferential consideration be given to a relative of the child.³

³ Section 361.3, subdivision (a) provides, as relevant: "In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative"

"[P]referential consideration under section 361.3 'does not create an evidentiary presumption in favor of a relative, but merely places the relative at the head of the line when the court is determining which placement is in the child's best interests.' [Citation.] In other words, when a child is taken from his parents' care and requires placement

A party seeking to enforce the relative placement preference on a section 388 petition must establish that circumstances have changed or new evidence has been acquired such that placing the child with the relative serves the child's best interest. The standard of review for an order denying a section 388 petition is abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415–416.)

Here, the issue of placing the children with their paternal aunt was fully litigated at the combined hearing in October 2018. The juvenile court heard evidence that the paternal aunt knew the children were in protective custody and was in contact with the agency. She understood the children needed to be kept local to facilitate reunification but expected to be contacted if reunification failed. She testified the social worker did not contact her in April and June 2017 to inform her that the children needed a new placement.

In ruling, the juvenile court acknowledged the agency could have pursued placing the children with the paternal aunt during that three-month period before June 2017 when they were not in a concurrent home. However, the court found the aunt could have been more assertive in seeking placement, noting she opted to “back off” from actively pursuing placement while the parents were attempting reunification and could have done more to develop a relationship with the children in the meantime. Ultimately, however, the court found it would not serve the children's best interests to remove them from the prospective adoptive parents, to whom they were clearly bonded, to place them with the

outside the home, section 361.3 assures an interested relative that his or her application for placement will be considered before a stranger's request.” (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.) Thus, the relative placement preference is not “a relative placement *guarantee*.” (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.) The relative placement applies when a child is taken from his parents and is placed outside the home pending the determination whether reunification is possible. It also applies to placements made after the dispositional hearing, even when reunification is no longer ongoing, whenever a child must be moved. (*In re A.K.* (2017) 12 Cal.App.5th 492, 498.)

paternal aunt, with whom they had a limited relationship. The court was also concerned about the aunt's ability to protect the children, given text messages from mother to the aunt implying the aunt wanted placement so the parents could resume custody of the children.

We conclude the contentions raised in the parents' letters do not establish good cause there are arguable issues requiring supplemental briefing. Further, though we are not required to do so, we have reviewed the pertinent parts of the record and we have found no arguable issues for briefing. (*Phoenix H.*, *supra*, 47 Cal.4th at pp. 841–842.) Accordingly, we dismiss the appeal.

DISPOSITION

This appeal is dismissed.